

**CIVIL SERVICE COMMISSION MINUTES**

**September 25, 2003**

A special meeting of the Civil Service Commission was held at 3:00 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman  
Gordon Austin  
Marc Sandstrom  
A.Y. Casillas

Absent was:

Sigrid Pate

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer  
Ralph Shadwell, Senior Deputy County Counsel  
Selinda Hurtado-Miller, Reporting

**Approved**  
**Civil Service Commission**

**October 22, 2003**

**CIVIL SERVICE COMMISSION MINUTES  
SEPTEMBER 25, 2003**

2:00 p.m.           CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

3:00 p.m.           OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

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<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
5,6,8,11,12,13,14	15,16,20	9,10	4
15,16,17,18,19,20			
21,22,24			

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COMMENTS Motion by Casillas to approve all items not held for discussion; seconded by Sandstrom. Carried.

**CLOSED SESSION AGENDA  
County Administration Center, Room 458  
(Notice pursuant to Government Code Sec. 54954.2)  
Members of the Public may be present at this  
location to hear the announcement of the  
Closed Session Agenda**

A. Commissioner Austin: **William Hamilton, Jr., M.D.**, former Psychiatrist II, appealing an Order of Termination and Charges from the Health and Human Services Agency.

B. Commissioners Sandstrom & Casillas: **Richard Armstrong\***, **Jodi Breton**, **Kimberly Brown**, **Chandra Carle**, **Steven Carver**, **Karl Eppel**, **Joanne Evoy\***, **David Hendren**, **Paul Johnsen**, **Robert Kearney\***, **Michele Linley**, **Susan Martin**, **Karen McKinley**, **Stacey Alyn McReynolds**, **Kelly Rand**, **Stacy Running**, **Robert Stein**, **Laura Tanney**, and **Anne Marie Urrutia**, Deputy District Attorneys III, alleging political affiliation discrimination by the former District Attorney and appealing the selection process used by the Department of Human Resources (DHR) and the former District Attorney for the classification of Deputy District Attorney IV. \*Appealed the selection process only, did not allege discrimination.

C. Commissioners Sandstrom & Casillas: **Rick Clabby\***, **Glenn McAllister**, **Elizabeth Porterfield**, **Phyllis Shess**, and **Terri Wyatt**, Deputy District Attorneys IV, appealing the selection process used by the DHR and the former District Attorney for the classification of Deputy District Attorney V. \***Rick Clabby** also alleged political affiliation discrimination by the former District Attorney.

D. Commissioner Austin: **Rosemarie Kurupas**, Sheriff's Sergeant, alleging retaliation discrimination by the Sheriff's Department.

E. Commissioner Newman: **Curtis Scott**, Deputy Sheriff-Detentions, alleging discrimination based on inappropriate use of confidential medical information by the Sheriff's Department.

**OPEN SESSION AGENDA**  
**County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

**MINUTES**

1. Approval of the Minutes of the regular meeting of August 20, 2003.

**Approved.**

**CONFIRMATION OF ASSIGNMENTS**

2. Commissioner Pate: Wendell Prude, SEIU Local 2028, on behalf of **James Brock**, former Mail Clerk Driver, appealing an Order of Removal and Charges from the Probation Department.

**Confirmed.**

**REASSIGNMENTS**

3. Commissioner Austin: **Rosemarie Kurupas**, Sheriff's Sergeant, alleging retaliation discrimination by the Sheriff's Department. Outside Hearing Officer Roy Dixon was originally assigned. (See Nos. 13, 17 & 21 below.)

**Confirmed.**

**WITHDRAWALS**

4. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028 on behalf of **Teresa Weatherford**, Detentions Processing Technician, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

**Withdrawn.**

**SETTLEMENT AGREEMENTS**

5. Commissioners Sandstrom & Casillas: **Richard Armstrong\***, **Jodi Breton**, **Kimberly Brown**, **Chandra Carle**, **Steven Carver**, **Karl Eppel**, **Joanne Evoy\***, **David Hendren**, **Paul Johnsen<sup>#</sup>**, **Robert Kearney\***, **Michele Linley**, **Susan Martin**, **Karen McKinley**, **Stacey Alyn McReynolds**, **Kelly Rand**, **Stacy Running**, **Robert Stein**, **Laura Tanney**, and **Anne Marie Urrutia**, Deputy District Attorneys III, alleging political affiliation discrimination by the former District Attorney and appealing the selection process used by the Department of Human Resources (DHR) and the former District Attorney for the classification of Deputy District Attorney IV. \*Appealed the selection process only, did not allege discrimination. (See No. 20 below.)<sup>#</sup>

**FINDINGS & RECOMMENDATIONS:**

At the regular meeting of the Civil Service Commission on July 16, 2002, the Commission appointed Marc Sandstrom and A. Y. Casillas to hear the complaints submitted by Complainants (Petitioners). Prior to a hearing being conducted, settlement discussions between the Petitioners, Office of the DA, County Counsel and DHR commenced and resulted in written agreements and withdrawals of complaints signed by the parties. The "Release and Settlement Agreements" settle Petitioners' complaints of alleged discrimination and selection process. It is therefore recommended that the Commission ratify the provisions contained in the

Release and Settlement Agreements; that the Commission accept the Notices of Withdrawal of Complaints; that the Release and Settlement Agreement between Petitioner Paul Johnsen and the County of San Diego does not include a separate selection process appeal; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

Commissioner Sandstrom commended the Office of the District Attorney and all parties for reaching a settlement agreement in this matter. He urged the DA and Department of Human Resources to develop the new selection process, as called for in the agreements, as expeditiously as possible.

**Motion by Sandstrom to approve Findings and Recommendations; seconded by Casillas. Carried.**

Commissioner Austin, on behalf of the entire Commission, thanked Commissioners Sandstrom and Casillas for their time and dedication, as well as Commission staff, for the hours of work product that went into this matter prior to all parties reaching settlement.

6. Commissioners Sandstrom & Casillas: **Rick Clabby<sup>†</sup>, Glenn McAllister, Elizabeth Porterfield, Phyllis Shess, and Terri Wyatt**, Deputy District Attorneys IV, appealing the selection process used by the DHR and the former District Attorney for the classification of Deputy District Attorney V. **†Rick Clabby** also alleged political affiliation discrimination by the former District Attorney.

#### FINDINGS & RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on July 16, 2002, the Commission appointed Marc Sandstrom and A. Y. Casillas to hear the complaints submitted by Complainants (Petitioners). Prior to a hearing being conducted, settlement discussions between the Petitioners, Office of the DA, County Counsel and DHR commenced and resulted in written agreements and withdrawals of complaints signed by the parties. The "Release and Settlement Agreements" settle Petitioners' complaints of alleged discrimination and selection process. It is therefore recommended that the Commission ratify the provisions contained in the Release and Settlement Agreements; that the Commission accept the Notices of Withdrawal of Complaints; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Sandstrom to approve Findings and Recommendations; seconded by Casillas. Carried.**

#### DISCIPLINES

##### Appeals

7. Everett Bobbitt, Esq., on behalf of **Cesario Avila**, Traffic Deputy, Sheriff's Department, appealing his reassignment from the Traffic Division to the Patrol Division by the Sheriff's Department.

RECOMMENDATION: Hold in abeyance.

**Staff recommendation approved.**

## Findings

8. Commissioner Austin: **William Hamilton, Jr., M.D.**, former Psychiatrist II, appealing an Order of Termination and Charges from the Health and Human Services Agency (HHSA).

### FINDINGS AND RECOMMENDATIONS:

*Prior to the Findings and Recommendations being read, Dr. Hamilton addressed the Commission. He stated that his entire career has been in public service. In the last year and a half his health has deteriorated and he feels that he was unjustly terminated.*

Synopsis: Employee was a competent and well-respected psychiatrist. The Agency took all reasonable steps to assist Employee in improving his performance. When it became apparent that the assistance to rehabilitate was not working well, the Agency progressively took action. Several witnesses testified at the hearing that this termination was tragic. This termination stems from performance deterioration during the last two years of Dr. Hamilton's employment with the County. The Agency felt that Dr. Hamilton's performance had deteriorated to such an extent that the County was exposed to potential liability that was unacceptable due to his health issues. Based on a preponderance of evidence, the Agency has proven all of the charges contained in the Order of Termination and Charges.

Therefore it is recommended that the Order of Termination and Charges be affirmed; that the Commission read and file this report; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations; seconded by Casillas. Carried.**

## DISCRIMINATION

### Complaints

9. **Linda Read**, Human Services Specialist, HHSA, alleging disability discrimination by the HHSA.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Newman assigned.**

10. **Susan Mazza**, Deputy District Attorney IV, alleging political affiliation discrimination by the Office of the District Attorney.

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

**Staff recommendation approved. Commissioner Sandstrom assigned.**

### Findings

11. Commissioner Casillas: **Valerie McBrayer**, Administrative Analyst I, Sheriff's Department alleging non-job related factor discrimination (differential treatment to job applicant based on employer) by DHR.  
(See No. 15 below.)

#### FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 18, 2003, the Commission appointed Commissioner A. Y. Casillas to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of non-job related (differential treatment to job applicant based on employer) discrimination, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against based on non job-related discrimination; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendation; seconded by Austin. Carried.**

12. Commissioner Casillas: **Mary Porath**, Analyst I, Sheriff's Department alleging non-job related factor discrimination (differential treatment to job applicant based on employer) by DHR. (See No. 16 below.)

#### FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on June 18, 2003, the Commission appointed Commissioner A. Y. Casillas to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of non-job related (differential treatment to job applicant based on employer) discrimination, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against based on non job-related discrimination; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Casillas to approve Findings and Recommendation; seconded by Sandstrom. Carried**

13. Commissioner Austin: **Rosemarie Kurupas**, Sheriff's Sergeant, alleging retaliation discrimination by the Sheriff's Department. (See Nos. 3, 17 & 21.)

#### FINDINGS AND RECOMMENDATIONS:

*Prior to the reading of these Findings and Recommendations Sergeant Kurupas informed the Commission that she has retained counsel pertaining to Agenda Items 13 and 17.*

At the regular meeting of the Civil Service Commission on February 6, 2002, the Commission appointed former Commissioner Roy Dixon to investigate the complaint submitted by Complainant. This matter has been reassigned to Commissioner Gordon Austin. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to

support Employee's allegations of retaliation, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against based on retaliation discrimination; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Austin to approve Findings and Recommendations; seconded by Sandstrom. Carried.**

14. Commissioner Newman: **Curtis Scott**, Deputy Sheriff-Detentions, alleging discrimination based on inappropriate use of confidential medical information by the Sheriff's Department. (See No. 18 below.)

#### FINDINGS AND RECOMMENDATIONS:

*Prior to the findings being read by Commissioner Newman, Corporal Scott addressed this item, as well as item no. 18 below. He requested that a component of the Sheriff's Department's selection process be changed. His request to review information from the promotional panel deliberations was denied and he believes this information should be made available.*

*Tom Reed, representing the Department, explained that creation of an eligibility list and certifying competing candidates from that list is the first step. The candidates then undergo an internal review by the Department and because there is a limited number of appointments made, the panel selects candidates who possess the most positives. He believes that candidates should not be made privy to the internal review process.*

At the regular meeting of the Civil Service Commission on July 16, 2003, the Commission appointed Barry I. Newman to investigate the complaint submitted by Complainant. The complaint was referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of non-job related factor (inappropriate use of confidential medical information) discrimination, and that probable cause that a violation of discrimination laws occurred was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against based on non-job related discrimination; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations; seconded by Austin. Carried.**

#### SELECTION PROCESS

##### Complaints

15. **Valerie McBrayer**, Administrative Analyst I, Sheriff's Department, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst II. (See No. 11 above.)

RECOMMENDATION: Consider all written and verbal input.

This item, as well as item No. 16 below, were heard in conjunction. Appellants McBrayer and Porath both spoke to the issue of alleged inconsistencies by DHR in qualifying candidates for the Analyst II classification. Although convoluted, the main issue was whether or not "time worked" in a position while under a classification study could count toward the MQ's for the Analyst II classification. A second issue was brought out that an individual in the Department was promoted to the Analyst II classification, having incorporated "time worked" during the course of a classification study.

There was allegation that DHR altered the rules/procedures during this particular selection process, thereby impacting not only McBrayer and Porath, but perhaps other candidates, as well.

DHR stated that even with the additional analysis undertaken by the Department (which did include the reclassification study), Appellants still did not qualify.

The Commission requested DHR to provide written documentation by the DHR Analyst stating that Appellants and other candidates would not have benefited from the reclassification study in qualifying for the Analyst II position.

**Motion by Sandstrom to continue this item to the next scheduled Civil Service Meeting; seconded by Austin. Carried.**

16. **Mary Porath**, Analyst I, Sheriff's Department, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst II. (See No. 12 above.)

RECOMMENDATION: Consider all written and verbal input.

See Item No. 15 above.

**Motion by Sandstrom to continue this item to the next scheduled Civil Service Meeting; seconded by Austin. Carried.**

17. **Rosemarie Kurupas**, Sheriff's Sergeant, appealing DHR's decision to disqualify her from further competing in the exam process for the classification of Sheriff's Lieutenant. (See Nos. 3, 13 & 21.)

RECOMMENDATION: Consider all written and verbal input.

Larry Cook, Executive Officer, explained that after reviewing all records relating to Ms. Kurupas' appeal of DHR's decision to disqualify her from further competing in the exam process for Sheriff's Lieutenant, he found nothing specific that would warrant the granting of her request.

**Motion by Sandstrom to deny request; seconded by Austin. Carried.**

18. **Curtis Scott**, Deputy Sheriff-Detentions, appealing his non-selection for the classification of Sergeant-Detentions by the Sheriff's Department and requesting that the Commission order the Sheriff's Department to delay any appointments to that class until this matter is resolved. (See No. 14 above.)

RECOMMENDATION: Consider all written and verbal input.

Larry Cook, Executive Officer, explained that Corporal Scott was appealing a portion of the selection process utilized by the Department, and should the Commission grant a Rule X hearing in this matter, only that portion should be addressed, not the entire process. Also, the



delay of any appointments at this time is not an immediate issue as the Department will not be making any new appointments for the next 90 days.

**Motion by Sandstrom to conduct a Rule X hearing; motion fails for lack of a second.**

**Motion by Newman to deny a Rule X hearing; seconded by Austin. Carried.**

**AYES:** Newman, Austin, Sandstrom  
**NOES:** Casillas  
**ABSENT:** Pate  
**ABSTENTIONS:** None

19. **Damon Colclough**, Protective Services Worker II, appealing the selection process used by the DHR and the HHSA for the classification of Protective Services Supervisor.

RECOMMENDATION: Grant Request.

Larry Cook, Executive Officer, stated that there is no evidence that DHR and/or HHSA have violated any rules and/or policies and procedures. He further added that staff's analysis finds that the selection process used in this matter is complex and may warrant review in a hearing setting.

Carlos Arauz, Director DHR, and Patricia Coughlin of DHR, described the certification process and explained that HHSA has over 6,000 employees, and oftentimes a number of requisitions may be opened simultaneously.

Mr. Colclough contends he has been denied promotional opportunities based on the selection process used by HHSA and DHR regarding the classification of Protective Services Supervisor. He further contends that DHR utilized two different recruitment numbers.

**Motion by Austin to conduct a Rule X hearing. Motion failed for lack of a second.**

**Motion by Newman to deny a Rule X hearing; seconded by Sandstrom. Carried.**

**AYES:** Newman, Sandstrom, Casillas  
**NOES:** Austin  
**ABSENT:** Pate  
**ABSTENTIONS:** None

20. **Paul Johnsen**, Deputy District Attorney III, appealing the selection of an alleged ineligible candidate who was certified to the classification of Deputy District Attorney IV. (See No. 5 above.)

RECOMMENDATION: Hold in abeyance pending input from the departments.

Mr. Johnsen requested that this matter be heard on October 14, 2003, the date Commissioners Sandstrom and Casillas had scheduled to hear the DDA Rule VI matters (See Item No. 5 above). Commissioner Sandstrom explained that he and Commissioner Casillas have not had an opportunity to review this selection process appeal because their emphasis was on the Rule VI matters, only. The Commission opted to hold this matter in

abeyance pending input from the Department until the Commission's next scheduled meeting.

**Motion by Sandstrom to accept staff recommendation; seconded by Newman. Carried.**

## **RECONSIDERATION**

21. **Rosemarie Kurupas**, Sheriff's Sergeant, requesting reconsideration of the Commission's August 20, 2003 decision to not seal a Performance Appraisal for the period April 24, 2002 to April 23, 2003. (See Nos. 3, 13 & 17 above.)

RECOMMENDATION: Deny Request.

Charles Uno on behalf of Sgt. Kurupas addressed the Commission regarding reconsideration of her 8/20/03 request to seal a performance appraisal. He stated that there has been a violation of DHR Policy and Procedure regarding untimely reporting. He further stated that Sgt. Kurupas was never advised of any deficiencies she may have exhibited prior to viewing the written evaluation. Mr. Uno requested the sealing of the above-dated performance appraisal as a balancing of equities between employee and department.

Larry Cook, Executive Officer, reminded the Commission that an appraisal may be sealed for process, only, not content. Ralph Shadwell, Sr. Deputy County Counsel, briefly explained the Commission's role on the subject of "reconsideration" and for edification purposes, reviewed various instances when reconsideration may come under the jurisdiction of the Commission.

**Motion by Casillas to reconsider. Motion fails for lack of second.**

**Request denied.**

## **OTHER MATTERS**

### **Seal Performance Appraisal**

22. **Rene Cortez**, Facilities Superintendent, Department of General Services, requesting the sealing of a Performance Appraisal for the period February 1, 2003 to May 15, 2003.

RECOMMENDATION: Consider all written and verbal input.

Mr. Cortez explained his reasons for requesting that his performance appraisal be sealed, and emphasized that he had not received an appraisal in 22½ months. The Department spokesperson, Patti Howell, explained that his appraisal was a department-generated appraisal and that his immediate supervisor, Charlotte Zolezzi, has been working with Mr. Cortez in attempting to improve his performance. She further explained that the Department was in the throes of reorganization and change, and that during this reorganizational period, Mr. Cortez' performance has declined. The Department took full responsibility for the untimely appraisal and vowed that the changes currently being incorporated into the Department include dissemination of timely performance appraisals.

Mr. Mark Clausen, a former supervisor of Mr. Cortez, spoke on his behalf, both on a professional level as well as on a personal level. The Commission encouraged the Department to help correct any

deficiencies Mr. Cortez may have relating to his current job, as it is evident that he is a potentially strong employee.

**Motion by Newman to deny request; seconded by Sandstrom.  
Carried.**

**Extension of Temporary Appointments**

23. Department of General Services

1 Mail Carrier (Gary Marshall)

RECOMMENDATION: Ratify

**Item No. 23 ratified.**

24. Public Input

Mr. John McTighe introduced himself to the Commission as the new Director of General Services since July 2003. He stated that part of his goals and values for the Department is to be accountable to the Commission, the public, and the Department's customers and employees, which include timely filing of all performance appraisals.

**NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE OCTOBER 22, 2003.**